IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEALNO.1104 OF 2005

Chikiraopa Gurushidhappa Shivgunde ..Appellant

Versus

Sarlabai Sidramappa Shivgunde & ors. ..Respondents

Mr.R.S.Alange for appellant

CORAM : P.V.KAKADE, J.

DATE : 4TH OCTOBER, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Addl. District Judge, Solapur dismissing the appeal and confirming the judgment and order passed by Civil Judge, Senior Division, Solapur dated 19.12.1994.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiffs filed the suit for declaration, partition and possession of their respective shares. The plaintiffs came with the case that the suit property is ancestral property and they had 1/2 share in the suit property and hence suit for partition declaration of such share and possession and consequential reliefs came to be filed. The defendants contested the suit, inter alia, denying the allegations made by the plaintiffs submitting that deceased Sidramappa husband of plaintiff no.1 had taken Rs.50,000/= from defendants mother at Pune and therefore, he has taken his share and therefore, the suit is not tenable in law and sought dismissal thereof.

. The learned trial judge adjudicated the dispute on the basis of available evidence and came to the conclusion that the plaintiffs had proved that they had 1/2th share in the suit properties and were entitled thereto. It was further held that the plaintiffs were entitled to the declaration of the sale deed of the suit property dated 12.7.1988 executed by defendant no.1 in favour of defendant no.4 as null and void and not binding on plaintiffs share. It was also held that the

defendants failed to prove that the plaintiffs had taken amount of Rs.50,000/= from his mother and therefore, he was entitled to share and as such the suit came to be decreed. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties dismissed the appeal. Hence the present appeal.

4. At the outset, it must be noted that there is absolutely no substantial question of law involved in this appeal. The only question sought to be raised on behalf of the appellant was to the effect that the mother of the parties was not made party to the suit and therefore, on that ground the suit is not tenable for want of presence of Neelavabai i.e. mother of the parties though she is entitled to share in the property. However, as can be seen from the observations made by the lower appellate court, it is apparent that in fact the partition deed Exh.53 was executed, which is an admitted position that she was not given share in the property and she had no grievance in that regard though she was present at the time of execution of the partition deed. Therefore, if Neelawwa was never given any share in the suit property to her own knowledge and she never made any grievance, the lower appellate court

has concluded that she was not necessary party to the suit, which was essential for execution of the deed of partition already executed amongst the parties. I do not find any fault with the reasoning adopted by the lower appellate court judge. There is no other point raised on behalf of the appellant and as such I hold that the concurrent findings recorded by both the courts below are legal and proper and it would brook no interference.

5. In the result the appeal stands dismissed. Consequently Civil Application No.1603 of 2005 also stands dismissed.